HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

WRIT PETITION No.14959 of 1996

Between:

Mahadasu Appalanarasimhulu

……...Petitioner

AND

Mandal Revenue Officer, Pusapatirega Mandal,
Vizianagaram District and another

……...Respondents

Counsel for the Petitioner : None

Counsel for the Respondents : Government Pleader for Assignment

Dated: 21st June, 2006

: ORDER :

The petitioner who claims to be in possession of dry land measuring Acs.5-00 comprised in Survey No.29/2 of Kollayavalasa Village, Pusapatirega Mandal, Vizianagaram District has filed this petition for restraining the respondents from interfering with his possession without following due process of law.

In the affidavit filed by him, petitioner Mahadasu Appalanarasimhulu has averred that the land in question has been in possession and enjoyment of his ancestors for last over 60 years and presently, he is occupying the same and growing cashew and mango crops. He has further averred that the Village Administrative Officer, Kollayavalasa came to his land on
22-07-1996 and threatened to dispossess him by alleging that he has encroached the government land. He explained to the concerned officer that the land was in the possession of his ancestors for more than 60 years and, therefore, he cannot be treated as an encroacher of public land but the latter refused to withdraw the threat of dispossession.

In the counter affidavit filed by Sri S.Swamibabu, Mandal Revenue Officer, Pusapatirega Mandal, Vizianagaram District, it has been averred that the land in question is entered as 'banjar land' in the revenue records. The same was assigned to Sri Bolle Suri Sanyasappadu, son of late Venkata Ramudu vide D.R No.97/79 in P.No.235 and was in possession and enjoyment of the assignee.

About four years ago, the assignee Bolle Suri Sanyasappadu died and his legal heirs namely Bolle Rambabu and Smt. Bolle Sanyasamma are cultivating the land. Sri Swamibabu has denied the petitioner's assertion that the Village Administrative Officer, Kollayavalasa threatened him to dispossess. According to the deponent, the petitioner has never been in possession of land comprised in Survey No.29/2 and, therefore, there is no question of dispossessing him.

It is borne out from the record that even though copy of the counter-affidavit was made available to the counsel for the petitioner in 1996, no rejoinder has been filed and no evidence has been produced before the Court to show that the land is in physical possession of the petitioner.

Learned Government Pleader for Assignment argued that the writ petition is liable to be dismissed because the petitioner does not have any semblance of right over land comprised in Survey No.29/2. She referred to the averments contained in paragraphs 2 to 5 of the affidavit of S. Swamibabu, the then Mandal Revenue Officer, Pusapatirega Mandal and submitted that the petitioner's assertion regarding threatened dispossession by the Village Administrative Officer should be rejected because the land is in possession of the heirs of the assignee namely Bolle Suri Sanyasappadu. She then argued that if the petitioner has forcibly occupied land measuring Acs.5-00 comprised in Survey No.29/2, this Court should not protect his illegal possession.

I have given serious thought to the arguments of the learned Government Pleader. Since the petitioner has not controverted the averments contained in the affidavit of Sri S. Swamibabu, the then Mandal Revenue Officer, Pusapatirega Mandal, the Court is left with no option but to proceed on the premise that the land comprised in

Survey No.29/2 situated in Village Kollayavalasa, Pusapatirega Mandal is in cultivating possession of the heirs of the assignee Sri Bolle Suri Sanyasappadu and not the petitioner and that the petitioner's assertion regarding the threat allegedly given by the Village Administrative Officer is incorrect. As a corollary, it must be held that the writ petition is misconceived and is liable to be dismissed as such.

There are two other reasons for my disinclination to entertain the petitioner's prayer. The pleadings contained in the affidavit of the petitioner and S.Swamibabu shows that while the petitioner claims to be in possession of land measuring Acs.5-00 comprised in Survey No.29/2 of Kollayavalasa Village, Pusapatirega Mandal, the Mandal Revenue Officer has not only denied the same but has also averred that the land is in possession of the heirs of the assignee late Sri Bolle Suri Sanyasappadu. These rival pleadings raises a contentious issue of fact which can be decided only after giving opportunity to the parties to lead oral as well as documentary evidence and I do not see any reason for the High Court to undertake that exercise under Article 226 of the Constitution of India. That apart, even if it is found that the petitioner is in possession of the land in question, the same will have to be treated as unauthorized because he has not produced any evidence to show his own title or that of his predecessors. In that situation, this Court will not exercise its power under Article 226 of the Constitution to protect the petitioner's illegal possession and pass an order which may adversely affect the right of the heirs of the assignee Sri Bolle Suri Sanyasappadu.

In the result, the writ petition is dismissed.

G.S.SINGHVI, CJ

Date: 21.06.2006
ks/svs